United Nations S/2003/1038

Security Council

Distr.: General
27 October 2003

Original: English

Letter dated 24 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 June 2003 (S/2003/622).

The Counter-Terrorism Committee has received the attached third report from Tunisia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant
to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 15 September 2003 from the Permanent Mission of Tunisia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: French]

The Permanent Mission of Tunisia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) and, with reference to his letter of 30 May 2003, has the honour to transmit to him herewith the replies of Tunisia to the questions contained in that letter (see enclosure).

3 September 2003

Republic of Tunisia
Ministry of Foreign Affairs
General Department of International Organizations and Conferences
Department of the United Nations and International Conferences

Enclosure

Reply of Tunisia to the second set of questions and further comments with regard to the implementation of resolution 1373 (2001)

[Original: Arabic]

1. Implementation measures

1.2 Regarding the criminalization of terrorist financing and the prosecution of offenders

1.2.1 Ongoing legislation

At the time of submission of the supplementary report, a bill supporting international counter-terrorism efforts had indeed been drafted and submitted to the Constitutional Council for consideration of its constitutionality. The bill was then referred to the National Assembly (Parliament), which is currently considering it at the committee level.

In the meantime, Tunisia has ratified the International Convention for the Suppression of the Financing of Terrorism pursuant to Act No. 99 (2002) of 25 November 2002. It has also ratified the United Nations Convention against Transnational Organized Crime pursuant to Act No. 63 (2002) of 23 July 2002.

In accordance with the new obligations imposed on States Parties under the above two Conventions and in view of the existence of a firm organic link between the methods of financing terrorism and those of laundering the proceeds of crime, it was essential to expand the bill supporting international counter-terrorism efforts by also including provisions to combat money-laundering offences and prevent illegal financial procedures in order to ensure Tunisia's fulfilment of its international obligations. The bill was again submitted to the Constitutional Council for opinion and is currently under consideration by the National Assembly. Completion of the procedures for its ratification is expected during the current year.

The amended bill takes into account Security Council resolution 1373 (2001) and all related international conventions, as well as the recommendations made by the Financial Action Task Force on Money Laundering (FATF), in particular the eight special recommendations on terrorist financing. The bill accordingly covers the following essential areas of concern:

- Section I is devoted to supporting international counter-terrorism efforts;
- Section II is devoted to the combating and suppression of money-laundering;

- Section III comprises common provisions to prevent the financing of terrorism and combat money-laundering, dealing with the following matters:
  - The prevention of illegal financial procedures;
  - The establishment of a financial analysis committee within the Central Bank;
  - The establishment of a system for monitoring suspicious or unusual operations and transactions;
  - The requirement to report suspicious or unusual operations and transactions;
  - The establishment of mechanisms to freeze funds having a suspected link to money-laundering operations or the financing of terrorist activities.

The bill defines terrorist offences and offences that are treated in the same manner (incitement to hatred and racial or religious intolerance).

Terrorist crime is an ordinary-law crime punishable in accordance with penal provisions and is defined as a terrorist crime by association with criteria stipulated in article 4 of the bill. These link the crime to an individual or collective scheme to intimidate a person or group of persons or spread alarm among the population with the intention of influencing the policy of the State and prompting it to do or to abstain from doing any action, disturbing public order or international peace and security, causing harm to persons or property, damaging the headquarters of diplomatic and consular missions and international organizations, inflicting serious harm on the environment so as to endanger the life or health of inhabitants, or damaging vital resources, the infrastructure, transport, communications, information systems or public amenities.

Chapter II of our earlier report lists the ordinary-law crimes which are classifiable as terrorist crimes by simple association with the criteria for that classification of crime (see Tunisia's report contained in document S/2001/1316 of 31 December 2001).

As part of the effort to cover all aspects of resolution 1373 (2001) and the relevant international conventions, the bill accordingly seeks to introduce special provisions criminalizing certain acts and terrorist activities, as well as various forms of instigating, supporting and financing the same, making them into separate offences which are not dependent on carrying out or attempting to carry out a specific terrorist act.

Under the bill, the following acts are criminalized:

- Article 12: Inducement or incitement to commit terrorist offences or join an organization or group connected with terrorist offences (imprisonment of 5 to 12 years and a fine of 5,000 to 20,000 dinars);
- Article 13: Membership in an organization or group having adopted terrorism as a means of achieving its purposes, or receipt of military training with the intention of committing a terrorist offence in or outside the territory of the Republic (imprisonment of 5 to 12 years and a fine of 5,000 to 50,000 dinars);
- Article 14: Use of the territory of the Republic to recruit or train a person or group of persons with the intention of committing a terrorist act in or outside

the territory of the Republic (imprisonment of 5 to 12 years and a fine of 5,000 to 50,000 dinars);

- Article 15: Use of the territory of the Republic to commit or engage in preparations to commit a terrorist offence against another country or its citizens (imprisonment of 5 to 12 years and a fine of 5,000 to 50,000 dinars);

- Article 16: The supply of weapons, explosives, ammunition or similar materials, devices or equipment for the benefit of an organization, group or persons connected with terrorist crimes (imprisonment of 5 to 20 years and a fine of 5,000 to 50,000 dinars);

- Article 17: The placement of capabilities and expertise at the disposal of a group, organization or persons connected with terrorist crimes or the dissemination or supply of information with the intention of assisting in the commission of a terrorist offence (punishable by imprisonment of 5 to 20 years and a fine of 5,000 to 50,000 dinars);

- Article 18: The preparation of a meeting place for the members of an organization or group or for persons connected with terrorist offences, assistance in harbouring or concealing them, pursuit of efforts to secure their escape or ensure that they are not discovered or punished, and attempts to benefit from the outcome of their acts (imprisonment of 5 to 12 years and a fine of 5,000 to 20,000 dinars);

- Article 19: The contribution of funds by any means, whether directly or indirectly, or collection of the same in the knowledge that their purpose is to finance persons, organizations or activities connected with terrorist offences, regardless of whether or not the source of the funds contributed or collected is licit (imprisonment of 5 to 12 years and a fine of 5,000 to 50,000 dinars);

- Article 20: The concealment or facilitation of the concealment of the true source of movable or immovable property, income or profits belonging to individuals or bodies corporate of any form linked with terrorists or with terrorist organizations or activities, or agreement to place the same under an assumed name or assimilate them into the economy, regardless of whether or not the source of such assets is licit (imprisonment of 5 to 12 years and a fine of 5,000 to 100,000 dinars, the amount of which may, with court authorization, be increased to the equivalent of five times that of the assets which are the subject of the offence);

- Under article 21 of the bill, the penalties referred to in articles 19 and 20 may, according to the circumstances, apply to directors and representatives of bodies corporate whose personal liability is established, without this ruling out the prosecution of such bodies, which shall be punished by a fine equalling five times the amount of that payable for the original offence when their involvement in such offences is proven;

- Article 22: The failure, even where bound by professional secrecy, to notify immediately the competent authorities of any acts, information or instructions which may have emerged concerning the commission of a terrorist offence (imprisonment of one to five years and a fine of 1,000 to 5,000 dinars);

- Article 23: Breach of the requirement to give testimony concerning terrorist offences (imprisonment of three to six months and a fine of 100 to 1,000

dinars, without this ruling out application of the heaviest penalties prescribed for the offence of giving false testimony).

The introduction of the special provisions listed above and consideration of the acts concerned as separate offences does not, however, prevent the bill from taking into account the seriousness of such offences; in that regard, it requires application of the heaviest penalties imposable for the terrorist offence committed or for complicity in the offence, within the meaning of article 32 of the Criminal Code and the provisions governing complicity, if it is established that such separate offences are linked with a specific terrorist act, even if it was not actually carried out or attempted.

Further, the bill provides for heavier penalties in connection with repeat offences, the capacity of the offender, the circumstances in which the offence was committed and the outcome of the offence, and also prohibits the combination of penalties, even if the offences follow in succession.

As for the financial aspect of the prevention and suppression of terrorism and the freezing of funds which finance it, the bill not only criminalizes the contribution or collection of funds for the benefit of persons, organizations or activities connected with terrorist offences but also criminalizes other acts, illustrated essentially in the following:

- Articles 69, 70, 74 and 101: Contravention of the security rules and minimum accounting rules which must be adopted by all bodies corporate, including in particular the requirements to:

  * Refrain from accepting any financial contributions or assistance of unknown origin or derived from illegal acts regarded by the law as offences, whether serious or less serious, or from individuals, bodies corporate, organizations or structures known to be involved, in or outside the territory of the Republic, in activities connected with terrorist offences;

  * Refrain from accepting any funds from abroad other than through an approved intermediary having its main office in Tunisia;

  * Refrain from accepting any cash sums equal to or exceeding 5,000 dinars, even if in the form of several payments between which there is a suspected link;

  * Maintain accounting ledgers, as well as lists of receipts and transfers having a foreign connection, including in particular a statement of the sums related thereto and their motive, as well as identify the individual or body corporate concerned with the same, prepare an annual balance sheet and keep accounting ledgers and documents for a period of not less than 10 years from the date when work on them is complete;

  * Verify the identity of the customer at the time of transaction and refrain from completing any operation or transaction where the identity of those concerned is unverified, insufficient or false, particularly when opening accounts, accepting deposits, renting safe-deposit boxes or carrying out large cash transactions.

Under the bill, directors or representatives of bodies corporate who violate the said rules are punished by imprisonment of six months to three years and a fine of 5,000 to 10,000 dinars, without this ruling out prosecution of the bodies corporate, which shall be punished by a fine equalling five times the amount of that payable for the original offence.

- Articles 73 and 101: Failure to comply with the requirement to undergo an external audit (imprisonment of six months to three years and a fine of 5,000 to 10,000 dinars, without this ruling out prosecution of the bodies corporate, which shall be punished by a fine equalling five times the amount of that payable for the original offence).

- Articles 76 (1) and 99: Breach of the requirement to declare to the customs authorities, when entering, exiting or in transit, any import or export of foreign currency equivalent to or exceeding an amount determined by ordinance of the Minister of Finance (imprisonment of 5 to 10 years and a fine of 3,000 to 300,000 dinars, with the possibility of a heavier fine equalling five times that prescribed for the offence).

- Articles 76 (2), 99 and 100: Breach of the requirement by approved intermediaries and subsidiaries authorized to perform currency exchanges to verify the identity of any person conducting operations with them in foreign currency of a value equivalent to or exceeding an amount determined by ordinance of the Minister of Finance, or breach of the obligation to report the matter to the Central Bank (imprisonment of one month to five years and a fine of 3,000 to 300,000 dinars, with the possibility of a heavier fine equalling five times that prescribed for the offence).

- Articles 86, 87 and 101: Breach of the requirement by the reporting party to suspend the operations or transactions which are the subject of the report or of the requirement to refrain from informing the party concerned of the contents of the report and of any consequential measures (imprisonment of six months to three years and a fine of 5,000 to 10,000 dinars, without this ruling out the prosecution of bodies corporate, which shall be punished by a fine equalling five times the amount of that payable for the original offence).

- Article 97: Wilful failure to fulfil the requirement to report suspicious or unusual operations and transactions (imprisonment of one to five years and a fine of 5,000 to 50,000 dinars).

In addition to the penalties mentioned, articles 45, 46 and 67 of the bill prescribe other punitive measures, consisting essentially in:

- Sequestration of the direct and indirect proceeds of the offence, even if they have been transferred to the forebears of the offender or to his descendants, siblings, spouse or relatives by marriage and whether such assets remain in their original form or were converted into other assets, except where it is established that they were not derived from the offence;

- Seizure of laundered funds and the direct and indirect proceeds of money-laundering offences and their sequestration for the benefit of the State, or alternatively, in cases where the said funds are not actually seized, the imposition of a fine of not less than the amount of the funds which are the subject of the offence;

- Confiscation of weapons, ammunition, explosives and other materials, devices and equipment used to commit or facilitate commission of the offence, together with items which it is an offence to manufacture, keep, use or trade;

- Confiscation of all movable and immovable property of the convicted party, as well as all or some of his funds if it is strongly suspected that they are being used to finance persons, organizations or activities connected with terrorist offences.

Under the bill, the perpetrators of terrorist offences may also be placed under administrative supervision for a period of not less than 5 years and not more than 10 years.

This does not rule out the handing down of all or some of the other supplementary penalties prescribed by law. These include that of banning the convicted party, for a period of not more than five years, from performing the professional and social functions and activities by means of which he exploited the facilities granted to him in order to carry out one or more operations to launder the proceeds of acts deemed by law to be offences, whether serious or less serious, or linked with the financing of persons, organizations or activities connected with terrorist offences.

1.2.2 Ratification of international treaties

- Tunisia signed the International Convention for the Suppression of the Financing of Terrorism on 2 November 2001. The signature was approved by the National Assembly pursuant to Act No. 99 (2002) of 25 November 2002 and the Convention was ratified by the President of the Republic pursuant to Ordinance No. 441 (2003) of 24 February, thereby entering into effect in Tunisia.

- The Constitution upholds the principle that, upon their approval by the National Assembly and subsequent ratification by the President of the Republic, conventions enter into the internal legislation currently in force and take precedence over internal laws.

In principle, it is unnecessary to repromulgate internal laws in order to incorporate the provisions of such conventions. However, the nature of the obligations arising from the ratification of certain conventions renders them non-self-executing, particularly those which are largely penal in character; the Penal Code stipulates that the legislative power shall take action to criminalize the acts in question and prescribe the penalties imposable for such acts in accordance with the principle that offences and penalties must be stipulated by law. Accordingly, no penalty can be imposed other than under a legal provision already in place, in accordance with article 13 of the Constitution and article 1 of the Code of Criminal Procedure.

The main areas of concern covered in the bill are summarized in paragraph 1.2.1 of this report, which also lists the offences introduced and the key mechanisms established in order to put its requirements into effect. Upon promulgation of the law, the adoption of a body of regulatory provisions referred to by the bill is anticipated.

1.2.3 Criminalization of terrorist fund-raising

In a bid to curtail the sources of finance for terrorism, article 19 of the bill criminalizes the contribution or collection of funds by any means, directly or indirectly, knowing that their purpose is for the financing of persons, organizations or activities connected with terrorist offences, regardless of whether or not the source of the funds contributed or collected is licit.

Article 20 of the bill also penalizes the concealment or facilitation of the concealment of the true source of movable or immovable property, income or profits belonging to individuals or bodies corporate of any form linked with terrorists or with terrorist organizations or activities, or agreement to place the same under an assumed name or assimilate them into the economy, regardless of whether or not the source of such assets is licit.

Article 15 of the bill also criminalizes the use of Tunisian territory to commit a terrorist offence against another country or its citizens or the undertaking of any activities in preparation for terrorist acts, including the contribution or collection of funds for the said purposes.

Article 14 of the bill criminalizes any intentional act with a view to the commission of a terrorist offence in or outside the territory of the Republic.

It is therefore clear that the bill criminalizes such acts and regards them as separate offences, which are not dependent on the extent to which they are connected with a specific terrorist act, whether or not it took place or was actually attempted and whether it was targeted at Tunisian territory or the territory of any other country.

It is also clear that these offences are not dependent on whether or not the funds contributed or collected with the intention of financing persons, activities or organizations connected with terrorist offences are from a licit source, nor are they dependent on the transfer of such funds from one country to another.

If, however, it is proved that the said offences are connected with a specific terrorist act, even if it did not take place or was not actually attempted, the heaviest penalty imposable for complicity in the intended terrorist act must be applied, in accordance with article 24 of the bill.

The bill may therefore be considered to cover all aspects of subparagraph 1 (b) of resolution 1373 (2002) and article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism.

1.2.4 Freezing of funds

Detention of a suspect pending investigation or committal for trial

The Tunisian legislature has strengthened the protection of individual freedoms to the level of that afforded by the Constitution. Under article 12 of the Constitution, custody is subject to judicial monitoring and preventive detention is dependent on court authorization. All forms of arbitrary detention or custody are therefore prohibited, which is in keeping with the recommendations contained in international instruments for the protection of human rights and the promotion of individual freedoms.

Moreover, although Tunisian law does not stipulate the administrative measures which some other legislations contain in order to limit individual freedoms, it empowers law-enforcement officers to hold a suspect in custody as part of preliminary enquiries or in execution of letters rogatory. It also authorizes examining magistrates to hold a suspect in preventive detention pending investigation proceedings.

This confirms that a suspect can be held in custody during preliminary enquiries and before investigation proceedings are authorized in his regard. Authorization may also be given to detain a suspect in preventive custody before he is committed for trial.

The system currently in force therefore strikes a balance between the requirements to achieve a measure of success in combating terrorist crime and the protection of individual freedoms so as to ensure consistency among Tunisia's various international obligations.

Freezing of the funds of a suspect pending investigation or committal to trial

Article 86 of the bill concerning the legal requirement to report suspicious or unusual operations provides for the immediate suspension of the operations or transactions which are the subject of the report, without the need for authorization to do so.

Article 87 of the bill also empowers the Financial Analysis Committee to authorize the reporting party to place a temporary freeze on the funds which are the subject of the report and deposit them in a suspense account. The reporting party is forbidden to notify the suspect of the freeze in order to avoid any attempt on his part to divert his remaining funds elsewhere.

The above measure remains in force throughout the period of investigation by the Financial Analysis Committee. If the investigations fail to confirm the suspicion about the operation or transaction which is the subject of the report, it so notifies the reporting party and authorizes the immediate lifting of the freeze.

If the suspicion is confirmed, however, it authorizes referral of the file to the Office of the Public Prosecutor for a decision as to the consequences and so notifies the reporting party, which continues to operate the freeze during a period sufficient to allow the Office of the Public Prosecutor to conduct its examination (a maximum of two days).

If the Office of the Public Prosecutor decides not to pursue the matter, the funds which are the subject of the report are immediately unfrozen. If, however, the Office of the Public Prosecutor sees fit to open an investigation, the decision to freeze the funds remains in force unless the competent judicial authority deems otherwise.

Article 94 of the bill also provides that the funds of a suspect may be frozen, even if no suspicious or unusual operation or transaction is reported, if authorized by the president of the Tunis Court of First Instance on the basis of a request from the Attorney-General to the Tunis Court of Appeal.

This confirms that the funds of a suspect may be frozen pending authorization of investigation proceedings or committal for trial.

Freezing of the funds of a suspect at the request of a foreign State

The bill contains no explicit provision to authorize the freezing of the funds of a suspect at the request of a foreign State. This does not, however, prevent the Tunisian Government from responding to such a request and seeking to obtain a decision to freeze such funds.

In this context, one of the above-mentioned methods of freezing may be used (authorization by the Financial Analysis Committee or by the president of the Tunis Court of First Instance on the basis of a request from the Attorney-General to the Tunis Court of Appeal).

The Tunisian legislature has vested in the State wide powers in bringing and pursuing public legal proceedings. As such, article 31 of the Code of Criminal Procedure empowers the prosecutor, even in the face of a complaint which is insufficiently grounded or justified, to request an investigation by the examining magistrate until such time as a charge is levelled or, where necessary, applications are made against a specific person. In all cases, a request by a foreign State for the freezing of funds may therefore be used as a basis for authorizing an investigation, on which occasion the examining magistrate may decide to freeze the funds of a suspect pending the completion of investigations.

1.2.5 Use of State territory for terrorist acts

See article 61 of the aforesaid Code of Criminal Procedures relating to attacks on the external security of the State and article 131 of the same Code relating to the complicity of offenders.

Article 61 bis provides that:

> "Any Tunisian or alien shall be deemed to perpetrate an attack on the external security of the State and shall be liable to the penalties laid down in article 62 of this Code if he:
>
> – Attempts in any way to undermine the integrity of Tunisian territory;
>
> – Establishes contact with the agents of a foreign State for the purpose of harming, or having resulted in harm to, the military or diplomatic status of Tunisian territory."

In regard to the criminalization of terrorist acts committed in other countries, see article 61 of the Code of Criminal Procedure. Article 62 bis of the Code also provides that: "The penalties stipulated in this section shall be imposed if the act took place against a State linked with Tunisia by a treaty of alliance or by an international instrument which takes its place."

As for ongoing legislation, the bill supporting international counter-terrorism efforts seeks to prevent the use of the territory of the Republic as a staging ground for the support of persons, organizations or activities connected with terrorist offences, for the commission or facilitation of the commission of terrorist offences against any other country or its citizens, or for the undertaking of any preparatory activities for such purpose.

In that context, article 13 of the bill criminalizes membership in any organization or group, whatever its form or however many its members, which, even coincidentally or incidentally, has adopted terrorism as a means of achieving its

purposes. It also criminalizes the receipt of military training in or outside the territory of the Republic with the intention of committing a terrorist offence at home or abroad.

In the same context, articles 14, 15 and 18 of the bill criminalize use of the territory of the Republic to recruit or train a person or group of persons with the intention of committing a terrorist act in or outside the territory of the Republic, as well as use of the territory of the Republic to commit a terrorist offence against any other country or its citizens or engage in preparations for that purpose, including the preparation of a meeting place for the members of an organization or group or persons connected with terrorist offences, assistance in harbouring or concealing them, pursuit of efforts to secure their escape or ensure that they are not discovered or punished, and attempts to benefit from the outcome of their acts.

Articles 16, 17, 19 and 20 of the bill criminalize other forms of support, such as the supply of weapons, explosives, ammunition or similar materials, devices or equipment for the benefit of an organization, group or persons connected with terrorist offences, the placement of capabilities or expertise at their disposal, the dissemination or supply of information with the intention of assisting in the commission of a terrorist offence, the contribution or collection of funds for their benefit, concealment of the true source of movable or immovable property, income or profits belonging to them, and agreement to place the same under an assumed name or assimilate them into the economy.

In terms of application, the customs authorities are responsible for taking all appropriate measures to implement the provisions of national laws and the international conventions which have been ratified and for seeking to implement the recommendations and resolutions of international bodies and organizations, in particular the World Customs Organization (WCO), which is concerned with mutual administrative cooperation among customs administrations. In this respect, it is worth noting that, at its two sessions held in June 2002, WCO adopted a draft resolution on security and facilitation of the international trade supply chain (see attachment), which was presented by the United States of America with the aim of combating terrorism in the wake of the events of 11 September 2001.

The implementation of this resolution requires human and financial resources, access to modern technologies for the electronic exchange of information, improved customs capabilities and enhanced performance standards, which are lacking in certain customs administrations. WCO and its member States are endeavouring to lay the appropriate groundwork of mechanisms, information bases and standardized procedures needed to implement the said resolution.

On that score, the Tunisian customs administration is closely following such activities and making efforts to exploit modern technologies to monitor the movement of international trade and counter illicit customs activities by:

- Using x-ray equipment to monitor containers;
- Exchanging information electronically among the various parties concerned with foreign trade;
- Using modern techniques in matters of selection and risk assessment;

- Working in conjunction with the security authorities to secure national borders by means of joint teams (specializing in explosives and narcotics) stationed at points of transit by land, air and sea;

- Working in conjunction with the concerned authorities (the National Guard and the Tunisian Navy) to monitor the Tunisian coastal strip and territorial waters and combat clandestine immigration and all threats to security.

Tunisia is endeavouring to adopt the necessary measures within the set deadline (1 July 2004) with a view to entering the stage of implementing the amendments made to the International Convention for the Safety of Life at Sea.

It also regularly follows the activities of the International Labour Organization aimed at the amendment of the Seafarers' Identity Documents Convention, 1958 (No. 108).

1.2.6 Border control

- Since 10 December 2002, the system for scanning alien machine-readable passports has been gradually introduced to border police stations and posts.

- Scanning equipment for machine-readable passports was installed at border units on a priority basis, taking into account:

  * The volume of traffic entering and exiting through Tunisia's international airports and the protection of persons arriving in Tunisia;

  * The vulnerability of the western border strip and in particular the growth of terrorism in some neighbouring States;

  * The large amount of traffic transiting through Ra's al-Jadir (almost 15,000 passengers a day) and the vulnerability of certain nationalities, particularly those from Africa;

  * The importance of the ports of Tunis and Halq al-Wadi (La Goulette) for the anchorage of Tunisian and foreign vessels and for leisure trips, and the volume of transit traffic.

All remaining border units will very shortly be equipped to scan machine-readable passports.

1.3 Protection of the economic and financial system

1.3.1 The bill seeks to establish an integrated system to achieve transparency of financial transactions and thus ensure that Tunisia's economic and financial system is not exploited in order to finance persons, organizations or activities connected with terrorist offences. Emphasis is placed on the following elements:

- The establishment of minimum accounting rules and security rules that are binding on all bodies corporate, including non-profit organizations, with a view to ensuring that they are not used as a cover for the financing of terrorism (in particular, the requirement to identify the customer in advance of any transaction and the ban on numbered accounts and financial transfers of unknown origin);

- The establishment of a system for monitoring and reporting suspicious or unusual transactions;

- The prompt establishment of a system for freezing funds involved in suspicious transactions;

- The establishment of a financial analysis committee within the Central Bank.

(a) In regard to the criteria adopted for the monitoring of suspicious or unusual operations and transactions, bearing in mind that the ways and means contrived to finance terrorism and conceal funds belonging to persons, organizations and activities connected with terrorist offences are constantly evolving, the legislature preferred to adopt a flexible system. Such criteria are therefore set forth in the regulatory provisions, rather than in the bill itself.

In that context, article 80 of the bill tasks the Financial Analysis Committee with issuing directives to assist banking and non-banking financial institutions in monitoring and reporting suspicious or unusual operations and transactions. Article 77 of the bill also tasks the authorities in charge of monitoring the said institutions and members of professions subject to the reporting requirement with devising programmes and more effective application measures to counter the offences of financing terrorism and money-laundering, as well as with monitoring the implementation of such programmes and measures.

One of the advantages of this flexible system is the potential which it offers for reviewing the criteria for the monitoring of suspicious and unusual operations and transactions and continually adapting them to the new methods devised to finance terrorism and conceal the funds of persons and organizations connected with terrorist offences.

(b) Article 85 of the bill requires all banking and non-banking financial institutions, as well as members of professions who are qualified by virtue of their duties to perform, monitor or give advice on financial operations and transactions resulting in the movement of funds, immediately to report any suspicious or unusual operations and transactions which give reason to suppose that they are directly or indirectly linked with the financing of persons, organizations or activities connected with terrorist offences.

In order to avoid listing all financially related professions, care was taken to employ a general form of wording that encompasses all such professions, including accounting experts, financial advisers, lawyers, notaries public, real-estate agents and others.

(c) On the one hand, the bill encourages fulfilment of the requirement to report suspicious or unusual operations and transactions by laying down the rule that neither legal proceedings for damages nor blame may be directed against any individual or body corporate for having fulfilled that requirement in good faith. On the other hand, it prescribes the penalty of imprisonment of one to five years and a fine of 5,000 to 50,000 dinars for breach of the said requirement.

(d) In accordance with the bill, a committee competent in financial analysis, known as the Tunisian Financial Analysis Committee, was established within the Central Bank and is composed of a steering panel, an operational unit and a general secretariat. The duties of this committee are essentially as follows:

- To issue directives to assist banking and non-banking financial institutions in monitoring and reporting suspicious or unusual operations and transactions;

- To provide assistance with research activities, training, study and, in general, any activity relating to its field of intervention;

- To receive and analyse reports concerning suspicious or unusual operations and transactions and, where necessary, authorize the reporting party to place a temporary freeze on the funds which form the subject of the report and place them in a suspense account until its own work is complete;

- To determine whether the outcome of such reports in the light of its investigations shall be to:

  * Authorize the reporting party to pursue completion of the operation or transaction which was temporarily suspended, as well as unfreeze the funds which are the subject of the report, if the suspicion concerning such operation or transaction is unconfirmed, or;

  * Immediately refer the findings of its work and any documents in its possession to the prosecutor for determination of the outcome, if the investigations confirm the suspicion concerning the operation or transaction which is the subject of the report;

- To represent the various departments and authorities concerned with such matters at the domestic and foreign levels and facilitate contact among them;

- To seek assistance from its counterparts in foreign countries to which it is linked by cooperation agreements and accelerate the exchange of financial information in order to ensure early warning of terrorist offences and prevent their commission.

(e) Section III of the bill deals with common provisions to combat the financing of terrorism and counter money-laundering.

The bill has adopted a broad definition of the concept of money-laundering, which includes not only narcotics offences, as is the case with a number of comparable laws, but also all serious offences deemed by law to be offences, whether serious or less serious, which is to say those offences, including terrorist offences, which are punishable by imprisonment for a minimum term of 16 days.

Funds intended for money-laundering offences usually stem from illicit sources, whereas terrorism is usually financed through contributions from a licit source. It was therefore essential to take this fact into consideration and criminalize the contribution or collection of funds for the benefit of persons, organizations or activities connected with terrorist offences, as well as the concealment or administration of such funds or their assimilation into the economy, regardless of whether or not they derive from a licit source.

Consequently, the bill imposes on banking and non-banking financial institutions and on members of the above-mentioned professions the requirement to report immediately in writing to the Tunisian Financial Analysis Committee all suspicious or unusual operations and transactions which give reason to suppose that they are directly or indirectly connected with the proceeds of unlawful activities regarded by the law as serious or less offences or with the financing of persons or organizations connected with terrorist offences.

It is therefore clear that the reporting requirement is not confined to the laundering of proceeds derived from narcotics offences alone but that it also includes all other serious offences, as well as funds derived from operations and transactions having a suspected link to the financing of individuals or bodies corporate connected with terrorist offences, regardless of whether or not such funds are from a licit source.

1.3.2 It was affirmed in our previous report that Tunisia has no alternative system for the transfer of funds, which task is exclusively assigned to loan institutions and the Tunisian Post Office (see Tunisia's report contained in document S/2002/1024 of 30 August 2002).